

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Denver City, Texas)

MB Docket No. 05-155
RM-11226

NOTICE OF PROPOSED RULE MAKING

Adopted: March 23, 2005

Released: March 25, 2005

Comment date: May 12, 2005

Reply comment date: May 27, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Ramar Communications II, Ltd., ("Petitioner"), licensee of Station KSTQ-FM, Plainview, Texas, proposing to amend the FM Table of Allotments, Section 73.202(b) of the rules, to delete vacant and unapplied for Channel *248C2 at Denver City, Texas, or, in the alternative, modify the site restriction for Channel *248C2¹ to accommodate Petitioner's pending application to modify Station KSTQ-FM's operation.

2. Petitioner states that this deletion will remove an allotment that has retroactively become short-spaced to its Station KSTQ-FM, and that this short-spacing prohibits Station KSTQ-FM from making any modifications to its facilities to improve service to Plainview, Texas. Station KSTQ-FM presently operates a directional facility on Channel 247C1 at Plainview, Texas.² At the time that the application for the construction permit underlying Station KSTQ-FM's licensed facility was filed, the proposed facility complied with the minimum distance separation requirements of Section 73.207 of the rules. On December 22, 2000, the construction permit for Channel *248C2 at Denver City expired. The allotment reverted to the status of vacant and unapplied for, and the original allotment reference coordinates for that channel were reinstated.³ As a consequence, Station KSTQ-FM became short-spaced to that vacant allotment by 17 kilometers. In addition, Station KSTQ-FM cannot avail itself of the contour protection pursuant Section 73.215 of the rules because of the extent of the short-spacing.

3. The deletion will permit Petitioner to modify its directional facilities to operate omnidirectionally and thereby substantially improve its service to Plainview. It has pending an application to permit Station KSTQ-FM to operate omnidirectionally. It states that if that application is dismissed, it will file a replacement application to operate omnidirectionally upon the approval of the revised allotment. We note that because no station was ever operational on Channel *248C2 at Denver

¹ Channel 248C2 at Denver City was reserved for noncommercial educational ("NCE") use by Report and Order *See Table of Allotments, Various Communities*, 19 FCC Rcd 15418 (M.M. Bur. 2004). Starboard Media Foundation expressed interest in Channel *248C2 and we will serve them a copy of this Notice.

² See File No. BLH-20030605ADW.

³ The original allotment coordinates for Channel *248C2 at Denver City are 33-01-53 NL and 102-48-47 WL.

City, this deletion would not constitute the removal of the sole local service at the community.⁴

4. In the alternative, Petitioner requests that in the event a third party express an intention to apply for Channel *248C2 at Denver City, we amend the site restriction to eliminate the short spacing. The site proposed by Petitioner fulfills the requirements set forth in the *NCE Report and Order* because from the amended site Channel *248C2 as proposed would provide a first NCE service to over 60,000 persons, which is significantly more than 10 percent of the population in the 1 mV/m service area for its proposal.

5. Even though we are reluctant to delete an allotment that has recently been reserved for noncommercial educational use, we will nevertheless seek comment on the proposed deletion or, as an alternative, new reference coordinates for Channel *248C2 at Denver City. This would allow Station KSTQ-FM to operate omnidirectionally, and increase the number of persons in its service area by 16,000 listeners. Furthermore, use of Channel *248C2 at Denver City at the amended site would provide an additional 862 listeners with NCE service. In accordance with Commission policy, if no noncommercial educational entity expresses an interest in use of Channel *248C2 at Denver City during the comment period in this proceeding, we shall delete the channel for lack of interest.⁵

6. The proposed site for Channel *248C2, at coordinates 32-55-57 NL and 102-58-10 WL is 13.6 kilometers (8.5 miles) west of Denver City. We note that the current site is 7.6 kilometers (4.7 miles) north of Denver City. The site proposed by Petitioner would increase the distance from the community, which we are normally loathe to do. When a proposed allotment would be subject to competing applications, it is the Commission's policy to allot the channel with the least site restriction necessary.⁶ However, such a change could serve the public interest because Channel *248C2 at Denver City did have a site restriction as allotted, the amended site covers 100% of the community, and our analysis shows that an additional 862 persons would receive a city grade signal from the channel from this location. Finally, we note that a Class C2 station could theoretically be sited a maximum distance of 32.6 kilometers (20.3 miles) from the community.

7. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u>	<u>Proposed</u>
Denver City, Texas	*248C2		---

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

9. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments or counterproposals on or before May 12, 2005, and reply comments on or before May 27, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal

⁴ See *Exmore and Cheriton, Virginia, and Fruitland, Maryland*, 16 FCC Rcd 10880 (M.M. Bur. 2001); *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (M.M. Bur. 1993).

⁵ See *Silverton, Colorado*, 9 FCC Rcd 4097 (M.M. Bur. 1994).

⁶ See *Wickenburg and Salome Arizona*, 17 FCC Rcd 7222 (MB 2002); *Bordelonville, Louisiana*, 16 FCC Rcd 13297 (M.M. Bur. 2001).

Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner or its counsel, as follows:

Dennis P. Corbett, Esq.
John D. Poutasse, Esq.
Leventhal, Senter and Lerman, PLLC
2000 K Street, N.W. Suite 600
Washington, DC 20006-1809

10. In addition, a copy of this *Notice of Proposed Rulemaking* shall be sent to Starboard Media Foundation, as follows:

Starboard Media Foundation, Inc.
c/o Denise B. Moline, Esq.
1212 S. Naper Blvd. #119-215
Naperville, Illinois 60540

11. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to the Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁷ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

13. For further information concerning this proceeding, contact Victoria M. McCauley, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served

⁷ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.